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2015 IL App (3d) 140620-U

Order filed November 24, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

| | | |
|-----------------------------------|---|-------------------------------|
| PAUL K. CASTON, |) | Appeal from the Circuit Court |
| |) | of the 13th Judicial Circuit, |
| Plaintiff-Appellant, |) | La Salle County, Illinois. |
| |) | |
| v. |) | |
| |) | |
| ILLINOIS DEPARTMENT OF |) | Appeal No. 3-14-0620 |
| CORRECTIONS and SALVADORE A. |) | Circuit No. 13-MR-382 |
| GODINEZ, Director of the Illinois |) | |
| Department of Corrections, |) | |
| |) | |
| Defendants-Appellees. |) | Honorable Troy D. Holland, |
| |) | Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The issues raised by appellant on appeal are now moot warranting dismissal of this appeal.
- ¶ 2 The circuit court sentenced plaintiff Paul K. Caston to serve seven years' imprisonment for burglary convictions in Peoria County case No. 07-CF-1122. Caston violated the terms of his mandatory supervised release (MSR) for this sentence by committing a new felony offense in

2012, and the Illinois Department of Corrections (DOC) returned Caston to prison in case No. 07-CF-1122. Caston was charged and sentenced to serve four and one-half years' imprisonment for the 2012 felony offense. Based on Caston's violation of MSR in case No. 07-CF-1122, DOC determined Caston did not qualify for the 180-day supplemental sentence credit (supplemental credit) for his 2007 sentence and set a new release date of September 24, 2014, for that case.

¶ 3 Caston filed a declaratory complaint in the circuit court asking the court to declare that defendants, DOC and Director Salvatore A. Godinez, wrongfully applied the rules and statute in an *ex post facto* manner when determining Caston did not qualify for the 180-day supplemental credit in case No. 07-CF-1122. After filing this appeal, DOC has released Caston on MSR for case No. 07-CF-1122, thereby making the issues raised in this appeal regarding supplemental credit for an earlier release date moot. We dismiss this appeal.

¶ 4 BACKGROUND

¶ 5 Caston pled guilty to the felony offense of burglary in Peoria County case No. 07-CF-1122 in February of 2008. The court sentenced Caston to serve seven years' imprisonment in DOC, followed by a three-year term of MSR. Caston was released from prison and began his term of MSR on May 20, 2011. On June 24, 2012, while serving his MSR, Caston committed a new felony theft offense, filed by the State in Peoria County case No. 12-CF-671. On November 30, 2012, defendant pled guilty to case No. 12-CF-671 and received a sentence of four and one-half years' imprisonment for that offense. Caston's projected release date for case No. 12-CF-671 was September 24, 2014, with a final mandatory release date of December 24, 2016.

¶ 6 In January 2013, DOC also determined Caston violated his MSR in case No. 07-CF-1122 and no longer qualified for the supplemental credit as provided by the provisions of section 3-6-3(a)(3) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(3) (West 2012))

and section 107.210(a)(d) of the Illinois Administrative Code (Admin. Code) (20 Ill. Adm. Code 107.210(a)(d) (eff. Feb. 1 2013)). Section 107.210(a)(d) provides that no offender qualifies for supplemental credit if he was returned to DOC for a violation of his MSR. *Id.* DOC determined Caston's new projected release date in case No. 07-CF-1122 was November 12, 2013.

¶ 7 Caston filed a *pro se* complaint in the circuit court on December 19, 2013, followed by a subsequent *pro se* "Second Amended Class Action Verified Complaint for Declaratory Judgment, Injunctive Relief, and Damages, With Jury Demand" (declaratory complaint) on April 16, 2014. Caston's declaratory complaint alleged defendants DOC and Salvatore A. Godinez, the director of DOC, applied section 107.210(a)(d) of the Admin. Code (20 Ill. Adm. Code 107.210(a)(d) (eff. Feb. 1 2013)) in an *ex post facto* manner before determining that Caston did not qualify for the 180-day supplemental credit in case No. 07-CF-1122 under the Unified Code. 730 ILCS 5/3-6-3(a)(3) (West 2012). Caston claimed section 107.210(a)(d) became effective after the court imposed his sentence in case No. 07-CF-1122. Caston included a prayer for relief asking the circuit court to: certify the case as a class action lawsuit, enjoin defendants from applying section 107.210(a)(d) of the Admin. Code retroactively to convictions occurring prior to its effective date, declare and permanently enjoin DOC from automatically denying Caston and other similarly situated MSR violators the 180-day supplemental credit for early release based on section 107.210(a)(d) of the Admin. Code, and declare that section 107.210(a)(d) of the Admin. Code directly conflicts with the supplemental credit provisions of section 3-6-3(a)(3) of the Unified Code. *Id.*

¶ 8 Defendants filed a motion to dismiss the declaratory complaint on May 21, 2014. The motion alleged Caston's declaratory complaint failed to state a cause of action against either DOC or Director Godinez, and that sovereign immunity also defeated the allegations against the

director. On August 6, 2014, the court allowed defendants' motion to dismiss Caston's declaratory complaint with prejudice. Caston filed a timely appeal.

¶ 9

ANALYSIS

¶ 10

On appeal, defendants assert that Caston's appeal is moot because Caston has been released from prison and is now serving his term of MSR in case No. 07-CF-1122. Defendants' brief refers to the DOC public website, www.illinois.gov/idoc/Pages/default.aspx, to support the claim that Caston is no longer incarcerated in DOC in case No. 07-CF-1122. Additionally, Caston has not filed a reply brief challenging this fact or this court's ability to take judicial notice of the public records of DOC.

¶ 11

Illinois courts have long held that an appeal is considered moot when intervening events occur that make it impossible for the appellate court to grant effectual relief to the complaining party or where the issues have ceased to exist. *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007); *In re Christopher K.*, 217 Ill. 2d 348, 358-59 (2005); *In re J.T.*, 221 Ill. 2d 338, 349 (2006). The fact that the events that render an appeal moot occur while a case is pending on appeal does not alter this conclusion. *Felzak*, 226 Ill. 2d at 392. Our supreme court has held that, if it is apparent that the reviewing court cannot grant effectual relief, the court should not resolve the question before it merely for the sake of setting precedent to govern future cases. *In re Commitment of Hernandez*, 239 Ill. 2d 195, 201 (2010).

¶ 12

In the case at bar, Caston challenges the *ex post facto* application of section 3-6-3(a)(3) of the Unified Code (730 ILCS 5/3-6-3(a)(3) (West 2012)) and the related administrative rule (20 Ill. Adm. Code 107.210(a)(d) (eff. Feb. 1 2013)) that denied him the extra 180 days of supplemental credit to his prison sentence and his earlier release in case No. 07-CF-1122. Since

Caston has since been released from prison in case No. 07-CF-1122, this court cannot grant effectual relief to Caston. Therefore, the issues on appeal are now moot.

¶ 13

CONCLUSION

¶ 14

For the foregoing reasons, we dismiss this appeal under the mootness doctrine.

¶ 15

Appeal dismissed.